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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE FORMAL
COMPLAINT OF WESTCOR/
GOODYEAR, L.L.C. and GLOBE LAND
INVESTORS, L.L.C. AGAINST
LITCHFIELD PARK SERVICE COMPANY

DOCKET NO. SW-01428A-08-0234

NOTICE OF FILING

Litchfield Park Service Company ("LPSCo") hereby submits this Notice of Filing the testimony of Greg Sorenson in the above-referenced matter.

On September 12, 2008, LPSCo and complainants Westcor/Goodyear, L.L.C. and Globe Land Investors, L.L.C. ("Developers") executed a Settlement Agreement relating to this docket. On September 16, 2008, LPSCo and Developers filed a Joint Notice of Filing Settlement Agreement and Request for Approval with the Corporation Commission. On September 19, 2008, the Administrative Law Judge issued a procedural order setting the hearing date for October 1, 2008 and requiring LPSCo and Developers to file direct testimony in support of the Settlement Agreement by September 22, 2008.

In accordance with that order, LPSCo hereby files the attached **Exhibit A**, which is the Testimony of Greg Sorensen in Support of Request for Approval of Settlement Agreement.

Arizona Corporation Commission

DOCKETED

SEP 22 2008

DOCKETED BY

1 RESPECTFULLY SUBMITTED this 22nd day of September, 2008.

2 FENNEMORE CRAIG, P.C.

3
4 By 

5 Jay L. Shapiro

6 Todd Wiley

7 3003 North Central Avenue, Suite 2600

8 Phoenix, Arizona 85012

9 Attorneys for Litchfield Park Service Company

10 **ORIGINAL** and thirteen (13) copies of the
foregoing filed this 22nd day of September, 2008 to:

11 Docket Control
12 Arizona Corporation Commission
13 1200 W. Washington St.
Phoenix, AZ 85007

14 **COPY** of the foregoing hand delivered
this 22nd day of September, 2008 to:

15 Dwight D. Nodes
16 Assistant Chief Administrative Law Judge
17 Arizona Corporation Commission
18 1200 W. Washington Street
Phoenix, AZ 85007

19 Ayesha Vohra
20 Legal Division
21 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

22 **COPY** mailed and emailed
this 22nd day of September, 2008 to:

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Exhibit A

1 FENNEMORE CRAIG, P.C.
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9 LITCHFIELD PARK SERVICE COMPANY

DOCKET NO. SW-01428A-08-0234

10
11 **TESTIMONY**
12 **OF**
13 **GREG SORENSEN**
14 **IN SUPPORT OF REQUEST FOR APPROVAL OF**
15 **SETTLEMENT AGREEMENT**
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1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Greg Sorensen. My business address is 12725 W. Indian School Road,
4 Suite D-101, Avondale, AZ 85392.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. On behalf of the Respondent, Litchfield Park Service Company ("LPSCo").

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by Algonquin Water Services ("AWS") as Director of Operations
9 for the Western Group. AWS is an affiliate through common ownership of LPSCo
10 and LPSCo's parent, Algonquin Water Resources of America, which is eventually
11 owned by Algonquin Power Income Fund ("APIF").

12 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES IN THESE**
13 **POSITIONS?**

14 A. I oversee the operations and business management functions for AWRA's utility
15 holdings in Arizona. AWS manages and operates 18 utilities in Arizona, Texas,
16 Missouri, and Illinois. I have the responsibility for the daily operation of our
17 Arizona utilities, financial operating results for each utility, capital and operating
18 cost budgeting, rate case planning and oversight and rate setting policies and
19 procedures as relating to the departments under my responsibility.

20 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

21 A. Yes, I have testified in Commission proceedings involving LPSCo, Gold Canyon
22 Sewer Company, and Northern Sunrise and Southern Sunrise water companies.

23 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
24 **PROCEEDING?**

25 A. On September 12, 2008, LPSCo and the complainants in this docket,
26 Westcor/Goodyear, L.L.C. and Globe Land Investors, L.L.C. ("collectively

1 “Developers”) entered into a Settlement Agreement (the “Settlement”). The parties
2 jointly filed the Settlement Agreement with the Commission on September 16,
3 2008 and, at that time, requested that the Commission approve the agreement as a
4 fair and final resolution of all claims made in this docket. Such approval would
5 also resolve the companion complaint filed by the Developers against LPSCo in the
6 Superior Court. The purpose of my testimony is to explain and support the request
7 for approval on behalf of LPSCo.

8 **II. REQUEST FOR COMMISSION APPROVAL OF THE SETTLEMENT.**

9 **A. Background.**

10 **Q. WOULD YOU PLEASE DESCRIBE THE DISPUTE BETWEEN LPSCO**
11 **AND THE DEVELOPERS THAT GAVE RISE TO THE LITIGATION?**

12 A. Yes, it is actually pretty straightforward. In 2001, before LPSCo was acquired by
13 AWRA, Globe Land Investors LLC and LPSCo entered into a number of
14 agreements concerning the provision of water and wastewater utility services by
15 LPSCo to a 300-acre parcel of land located in Goodyear, AZ. One of the
16 agreements was a Commercial Wastewater Facilities Agreement (“2001
17 Agreement”). The 2001 Agreement established a funding obligation on the part of
18 the Developers to pay for wastewater treatment facilities that would, among other
19 things, provide capacity to be used to serve the Estrella Falls development in
20 Goodyear, Arizona. Developers’ funding obligation was a condition of utility
21 service being provided to Estrella Falls by LPSCo.

22 Under the 2001 Agreement, the availability of wastewater services would
23 come in two increments. The first and smaller Phase 1 increment called for
24 Developers to fund and LPSCo to make available approximately 60,000 gpd of
25 wastewater treatment capacity almost immediately and concurrent with the
26 construction of LPSCo’s Palm Valley Water Reclamation Facility (“PVWRF”).

1 Funding and utility services related to Phase I of the Estrella Falls project are not in
2 dispute between the parties. Instead, the current dispute between the parties and
3 this docket revolve around Developers' funding for treatment capacity needed to
4 serve Phase II of Estrella Falls.

5 It is LPSCo's position that under the 2001 Agreement, Developers are
6 required to fund the actual cost of capacity at the time we need to build that
7 capacity, not in 2000 dollars, which are the source of the \$2,538,000 estimated
8 capacity cost. Specifically, the 2001 Agreement provided that Developers'
9 advance for treatment capacity for Phase II of their project would be "\$2,538,000
10 or additional capacity cost, whichever is higher". Developers disagreed and argued
11 that their funding requirement is either \$2,538,000, based on the estimated capacity
12 cost set forth in the 2001 Agreement, or, alternatively, \$4,134,375, which is the
13 amount Developers claim they would be required to pay for Phase II if LPSCo's
14 hook-up fee tariff were applicable. So, in summary, the amount of Developers'
15 funding obligation for wastewater treatment capacity for Phase II of the Estrella
16 Falls Project is the fundamental issue in dispute between the parties.

17 **Q. WHAT DO YOU MEAN "IF" THE HOOK-UP FEE TARIFF APPLIES?**

18 A. LPSCo's hook-up fee tariff only went into effect on April 1, 2008. The tariff
19 applies to new service laterals "established" after the effective date of the tariff.
20 "Established" could be interpreted to mean physically installed into the ground, or
21 simply mean that a line extension agreement was entered into between two parties.
22 Therefore, we faced a situation where the 2001 Agreement predated the tariff,
23 where we were uncertain as to how the language of the hook-up fee tariff should be
24 interpreted, and where we interpreted the 2001 Agreement to require a greater level
25 of funding by the Developers. We also do not know whether, if our hook-up fee
26 tariff applies in these circumstances, we can still require the Developers to fund the

1 actual cost of the necessary capacity in excess of the amount of the hook-up fee. It
2 is this uncertainty that, in part, kept us from simply applying the hook-up fee tariff
3 to resolve this dispute.

4 **Q. BUT MR. SORENSEN, WHY DIDN'T LPSCO SIMPLY ACCEPT THE**
5 **DEVELOPERS' OFFER TO FUND EITHER THE \$2.5 MILLION OR THE**
6 **\$4.1 MILLION AND LPSCO FUND THE REST OF THE ACTUAL COST**
7 **OF THE NECESSARY CAPACITY?**

8 A. From the ratepayers' perspective, if Developers paid an amount less than the actual
9 cost of the capacity, it is LPSCo that will fund the difference and LPSCo's
10 ratepayers that will pay the return on and of LPSCo's investment through higher
11 rates. From the LPSCo perspective, we are concerned that, in the context of a
12 future rate case, the Commission could interpret the 2001 Agreement to have
13 required the utility to require Developers to have funded the total, actual cost of the
14 treatment capacity. This means that, if the actual cost of the capacity needed to
15 serve Phase II turns out to be in excess of the \$2.5 million or \$4.1 million funded
16 by Developers, the Commission could deny rate base treatment for the portion of
17 the actual cost of capacity paid for by LPSCo. This is a concern, even though
18 under current Commission rules and utility practices, we are not aware of any
19 affirmative obligation for any utility to collect the full cost of treatment capacity.
20 In this light, LPSCo simply was not willing to accept the risks associated with a
21 project of this size. However, as I explain below, if the Settlement is approved, we
22 will know that if we make a prudent investment it should be accorded rate base
23 treatment in a future rate case.

24 **B. The Settlement and LPSCO's Request for Approval.**

25 **Q. ALTHOUGH THE SETTLEMENT WAS ALREADY JOINTLY FILED**
26 **WITH THE COMMISSION BY THE PARTIES, COULD YOU BRIEFLY**

1 **DESCRIBE THE CRITICAL TERMS AND CONDITIONS OF**
2 **SETTLEMENT?**

3 A. Yes. For purposes of this proceeding, and the parties' joint request for approval,
4 there are essentially two critical components of the Settlement Agreement:
5 (1) LPSCo's agreement to provide up to 558,780 gpd of wastewater treatment
6 capacity for Phase II of Estrella Falls (Settlement Agreement, § 3.3); and
7 (2) Developers' agreement to fund \$8.67 per gallon, or \$4,844,623, towards the
8 cost of the additional capacity needed to serve Phase II of Estrella Falls (Settlement
9 Agreement, § 4).

10 **Q. WHAT IF THE COST OF THE ADDITIONAL CAPACITY IS MORE**
11 **THAN \$8.67 PER GALLON?**

12 A. Under the Settlement Agreement, LPSCo has agreed to fund any additional cost for
13 the capacity above the \$8.67 per gallon to be funded by Developers. LPSCo then
14 will seek and expects to include that additional investment amount in its rate base
15 in a future ratemaking proceeding.

16 **Q. IS LPSCO SEEKING APPROVAL TO INCLUDE THE PORTION OF THIS**
17 **CAPACITY THAT IT PAYS FOR IN RATE BASE IN THIS**
18 **PROCEEDING?**

19 A. No, that wouldn't be appropriate given that the plant has not been built and we
20 don't know how much of the actual cost of this capacity LPSCo will be required to
21 fund. LPSCo, however, seeks confirmation that its course of action, the funding to
22 be provided by Developers, is prudent.

23 **Q. WHAT APPROVAL DOES LPSCO NEED FROM THE COMMISSION IN**
24 **THIS PROCEEDING WITH RESPECT TO THE SETTLEMENT**
25 **AGREEMENT?**

26 A. LPSCo needs the Commission to approve the Settlement Agreement as a full and

1 final resolution of the Commission complaint filed by Developers. In doing so,
2 LPSCo asks that the Commission conclude that the amount to be funded by
3 Developers, \$8.67 per gallon for up to 558,780 gpd of treatment capacity, and
4 LPSCo's funding of the balance of those capacity costs, is a reasonable and prudent
5 means of financing the cost of additional wastewater treatment capacity necessary
6 for LPSCo to serve Estrella Falls Phase II, even if the actual cost is greater than
7 that level of Developer funding.

8 **Q. ARE YOU ASKING THAT THE COMMISSION GIVE APPROVAL NOW**
9 **FOR THE PLANT FUNDED BY LPSCO TO BE INCLUDED IN RATE**
10 **BASE IN A FUTURE RATE CASE?**

11 A. No, we are asking that the Commission provide what is essentially a type of
12 financing approval. As a condition of the Settlement Agreement, we need the
13 Commission to approve the Developer funding mechanism included in § 4 of the
14 Settlement Agreement. In other words, by approving the Settlement Agreement,
15 the Commission would be finding that the allocation of the funding responsibility
16 for this additional treatment capacity between LPSCo and the Developers is fair,
17 prudent and reasonable. In a future rate case, LPSCo still would have to
18 demonstrate that the actual cost of capacity LPSCo funded was a reasonable and
19 prudent investment given the facts and circumstances known at that time, meaning
20 it is used and useful to serve customers over a reasonable planning horizon of at
21 least five years.

22 **Q. DOES THAT MEAN THAT THE COMMISSION WOULD NOT BE ABLE**
23 **TO CONCLUDE IN A FUTURE RATE CASE THAT LPSCO SHOULD**
24 **HAVE REQUIRED A LARGER ADVANCE OR CONTRIBUTION IN AID**
25 **OF CONSTRUCTION FROM THE DEVELOPERS, WHATEVER THE**
26 **FINAL, ACTUAL COST?**

1 A. Yes, that is exactly what it means. Absent such approval by the Commission,
2 LPSCo simply cannot take such investment risk and would, unfortunately, be better
3 off litigating the dispute until one or both tribunals issued some sort of binding
4 decision(s) on the parties. Such result would not benefit LPSCo and its customers,
5 or the Developers and public interests in the City of Goodyear, where the Estrella
6 Falls project is located.

7 **Q. WHY DOES LPSCO BELIEVE THIS APPROVAL IS IN THE PUBLIC**
8 **INTEREST AND SHOULD BE GRANTED?**

9 A. First, the level of funding by Developers is greater than the amount Developers
10 claimed they were obligated to pay under the 2001 Agreement, and greater than the
11 amount that Developers would be required to pay if LPSCo's hook-up fee applies.
12 Additionally, as I testified above, under the Commission's main extension rules,
13 LPSCo could have elected to fund the entire amount of capacity on its own,
14 without any funding from the Developers and then would be entitled to rate base
15 treatment if the plant was used and useful. LPSCo asserts that the funding
16 mechanism in the Settlement Agreement serves the best interests of the Utility and
17 its customers simultaneously with the interests of the development. The Settlement
18 Agreement is a good faith and reasonable settlement of the funding disputes
19 between the parties and the Commission and Superior Court complaints filed by
20 Developers.

21 Second, as the Commission has heard throughout this case, the Estrella Falls
22 Phase II project is very important to the City of Goodyear and the surrounding
23 community and the individual residents who live in the vicinity. We provide water
24 and sewer service within the City and would like very much to cooperate with the
25 City in matters that they feel are important to the community and its residents who
26 are our customers. This is especially true because the project will expand our

1 customer base over which to spread the ever-increasing costs of providing on-
2 going utility service, as will be the case here when the Developers' project comes
3 on-line.

4 Third, this has already been and, if the Settlement is not approved, will
5 continue to be a costly dispute in terms of resources on the part of the parties and
6 the Commission. Approval of the Settlement will allow the Developers to develop,
7 LPSCo to provide utility service, and the Commission to focus on the many other
8 matters before the agency.

9 **Q. THANK YOU MR. SORESENSEN. DO YOU HAVE ANYTHING ELSE TO**
10 **ADD IN SUPPORT OF LPSCO'S REQUEST FOR APPROVAL OF THE**
11 **SETTLEMENT?**

12 **A.** Just to repeat that we believe this Settlement is a fair resolution to a hotly-contested
13 dispute pending in two different tribunals, and we join the Developers in asking the
14 Commission to approve the Settlement as requested before the October 22, 2008
15 deadline we have agreed to in order to accommodate the Developers' timetable.

16 **Q. DOES THAT CONCLUDE YOUR TESTIMONY IN SUPPORT OF THE**
17 **SETTLEMENT AND REQUEST COMMISSION APPROVAL?**

18 **A.** Yes.

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